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IN THE  
**Supreme Court Of The United States**

OCTOBER TERM 1983

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UNIVERSITY OF ARKANSAS BOARD OF TRUSTEES,  
BRADLEY JESSON, CHAIRMAN; JACQUELINE  
DOUGLAS; ROBERT PUGH; HUGH CHALMERS;  
JACK WILLIAMS; HALL McADAMS, III;  
KANEASTER HODGES, JR.; GUS BLASS, II;  
M. A. JACKSON, M.D.; W. SYKES  
HARRIS, SR.; MEMBERS OF THE BOARD . . . . *Petitioners*  
VS.

RACHEL GREER & ROSE MARIE WORD . . . . *Respondents*

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ON WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

Whether a person may intervene pursuant to Rule 24 (b) of the Federal Rules of Civil Procedure, in a Title VII case which has not been certified as a class action, if the person has not timely filed a charge of discrimination with the Equal Employment Opportunity Commission and has not received and timely acted upon a right to sue letter.

## PARTIES TO THIS PROCEEDING

The parties herein are as contained in the caption of this case, and these are all the parties to the proceeding in the court whose judgment is sought to be reviewed, with the exception of Pat Behlar and Herman B. Smith who have no interest in the outcome of this petition. Ms. Behlar's complaint was dismissed at the trial level and affirmed on appeal. Dr. Smith is no longer the Chancellor. The listing of the members of the Board of Trustees includes the members who have replaced those whose terms have expired since the case was first filed and appealed.

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UNIVERSITY OF ARKANSAS BOARD OF TRUSTEES,  
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OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit has not been reported. It is styled *Behlar v. Smith, et al.*, No. 82-2062, *Greer v. Smith, et al.*, No. 82-2241, *Greer v. Smith, et al.*, No. 82-2271, filed on October 27, 1983 and is reprinted in the Appendix A hereto.



## STATEMENT OF JURISDICTIONAL GROUNDS

The jurisdiction of this Court is involved pursuant to 28 U.S.C. § 1254 which provides in pertinent part as follows:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon petition by any party to any civil or criminal case, before or after rendition of judgment or decree;
- (2) . . .

and pursuant to Rule 17.1 of the Rules of the Supreme Court of the United States which provides special and important reasons to grant the writ, in part as follows:

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; . . . or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

The date of judgment sought to be reviewed and the time of its entry was October 27, 1983. This petition is timely filed on or before January 25, 1984.

## STATUTES AND RULES WHICH THE CASE INVOLVES

This case involves an interpretation of Rule 24 of the Federal Rules of Civil Procedure, specifically, Rule 24 (b) (2) which provides that a district court may grant an application for intervention "when an applicant's claim or defense and the main action have a question of law and fact in common."

Also involved in this case are sections of Title VII to the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5 (e) and (f) (1) regarding jurisdictional prerequisites to suit. Those sections are reprinted in the Appendix B hereto.

## STATEMENT OF THE CASE

In July 1979 plaintiff Greer was rejected for the position of Department Head of the Health, Physical Education Department at the University of Arkansas at Pine Bluff. She filed a charge of sex discrimination with the Equal Employment Opportunity Commission and a fact finding conference was held in October of 1979. In November 1979 she filed another charge of retaliation on which another fact finding conference was held in January of 1980. A conciliation agreement was not reached and she filed suit in May of 1980. She filed an across the board class action complaint of sex discrimination in employment pursuant to 42 U.S.C. §§ 1983 and 2000e.

In July 1980 intervenor Word was rejected for the position of Director of Educational Experiences in the



Division of Teacher Education at the University of Arkansas at Pine Bluff. She filed her application for intervention in March of 1981. Her application was granted in August of 1981. The case was certified a class action in February 1982 and trial commenced in the district court for the Eastern District of Arkansas on April 19, 1982, Honorable Henry Woods, presiding.

In August of 1982 the district court ruled in favor of the plaintiffs and the defendant university appealed on numerous issues. One of the procedural issues on appeal was whether the district court had abused its discretion in granting the application for intervention prior to certifying the class when intervenor had not timely filed a charge with EEOC and had not received and acted upon a right to sue letter.

The court of appeals affirmed on all issues except on the damages for harassment which it remanded to the district court for further findings.

This petition for a writ of certiorari to the Eighth Circuit Court of Appeals is on the issue of whether a person may intervene pursuant to Rule 24 (b) of the Federal Rules of Civil Procedure, in a Title VII case which has not been certified as a class action, if the person has not timely filed a charge of discrimination with the EEOC and has not received and acted upon a right to sue letter.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254 and the question is important and ripe for review because there is a split among the circuits and the ques-

tion has not been adequately addressed in the cases under Rule 24 of the Federal Rules of Civil Procedure.

### **BASIS FOR FEDERAL COURT JURISDICTION**

The district courts have jurisdiction over claims of civil rights violations pursuant to 28 U.S.C. §§ 1343, 1344, 2201 and 2202. The civil rights violations in this case were claimed pursuant to 42 U.S.C. §§ 1983 and 2000e.

### **ARGUMENT**

The writ for certiorari should be granted because the Eighth Circuit Court of Appeals has rendered a decision in conflict with the Ninth Circuit on the same matter. In addition, the Eighth Circuit has rendered a decision contrary to its own previous rule for permissive intervention. Finally, the Eighth Circuit's decision has so far departed from the accepted and usual course of judicial proceedings in Title VII cases, and it has so far sanctioned such a departure by the district court, as to call for an exercise of this Court's power of supervision.

The decision which is sought to be reviewed is contained on Page 5 of the court of appeals' slip opinion, as follows:

University appellants make two claims of procedural errors on the part of the district court. The first is that the district court improperly allowed Dr. Word to intervene because she had not filed

a charge with the EEOC. It claimed that this is a jurisdictional defect that defeats the order allowing intervention under Rule 24, Federal Rules of Civil Procedure. We do not find cases under Rule 24 that clearly govern the issue. However, in cases construing Rule 23 with respect to class actions in Title VII cases, it has been held that the purpose of 42 U.S.C. § 2000e-(5) (e) is to provide notice to the charged party so as to bring to bear the voluntary compliance and conciliation functions of the EEOC. When any charge is filed, these purposes are served so there is no claim of surprise in such a situation. [cites omitted]. The University, having been apprised of the sex discrimination claims by the other individuals, cannot now claim that it was improper to allow Dr. Word to intervene so as to assert charges of the same nature.

*Infra*, Appendix A, at A-6.

The Court of Appeals simply ignored the cases under Rule 24 which apply to this situation.

An intervenor pursuant to Rule 24, for all intents and purposes, becomes an original party. In this case, Dr. Word's cause of action did not even arise until a year after plaintiff Greer's, and two months after the complaint was filed. According to the Eighth Circuit's decision there is no difference between one who wishes to become a member of a class and one who wishes to intervene as a named plaintiff. If that were the case, there would not be two distinct rules of civil procedure to govern two clearly distinct and different situations.

The Eighth Circuit's decision is contrary to the decision in the Ninth Circuit in *Inda v. United Airlines*, 565 F.2d 554 (9th Cir. 1971), *cert. den.* 435 U.S. 1007. In *Inda* the court held that timely filing of an EEOC charge is not a necessary condition to obtaining relief by one as a member of the class in whose behalf suit has been brought. If, however, one wishes to become a named plaintiff she must have secured a right to sue by timely filing with EEOC and cannot rely on an earlier filing by another employee in a non-class action. At the time Dr. Word sought intervention the case had not been certified a class action, and was not so certified until a year later. At the time the original suit was filed, Dr. Word was not a member of the class on whose behalf the suit was brought as her alleged discrimination did not occur until two months after the suit was filed.

The decision of the Eighth Circuit herein is contrary to its own previous rule that independent jurisdictional ground is required for permissive intervention. *Babcock & Wilcox v. Parsons Corp.*, 430 F.2d 531 (8th Cir. 1970). In *Babcock* jurisdiction was based on diversity of citizenship. The court distinguished between intervention as of right and permissive intervention as follows:

Jurisdiction over a claim brought by an intervenor depends on the nature of the intervention. If the intervention is a permissive one the claim must be supported by independent jurisdictional grounds. [cites omitted]

*Babcock & Wilcox v. Parsons Corp.*, 430 F.2d at 540. In reversing the district court on its grant of intervention the court of appeals held as follows:

In summary, we conclude that Babcock was, at best, a permissive intervenor and its claim, lacking the requisite jurisdictional amount was not cognizable by a federal court. Accordingly, the judgment in favor of Babcock must be reversed.

*Id.* at 542.

Appellant University raised this issue on appeal, but the court of appeals did not address it. It ignored completely any consideration of the jurisdictional issue at all.

This Court has held that receiving and timely acting upon a right to sue letter is a jurisdictional prerequisite to suit under Title VII. *McDonnell-Douglas v. Green*, 411 U.S. 792 (1973). If independent jurisdictional grounds are required for permissive intervention in diversity cases then the same rule should be applied for permissive intervention in Title VII cases. Also, if the rules for intervention and for becoming a class member are to be the same, why are there two different rules of civil procedure to govern those situations?

Other Circuits have distinguished the two situations. The Eighth Circuit should also distinguish the two situations. In *Foster v. Geuory*, 655 F.2d 1319 (D.C. Cir. 1981) the court held that the critical factor in determining whether an individual Title VII plaintiff



must file an EEOC charge, or whether he may escape the requirement by joining with another plaintiff who has filed a charge is the similarity of the two plaintiffs' complaints. The court continued, however, that where the two complaints differ to the extent that one of the claims can be resolved only by the courts, then the *Oatis* rationale does not apply. In such a case each plaintiff should be required to file separately an EEOC charge in order to effectuate the purpose of Title VII.

In the present case, although the complaints of Greer and Word appeared similar, they were separated in time by one year. The University should have been afforded the opportunity to respond to Word's charges independently of Greer's and to go through the conciliation process provided by Title VII. Word has never been required to show that filing with EEOC would have been futile. The Eighth Circuit's decision herein completely thwarts the whole purpose of Title VII, that is "to bring to bear the voluntary compliance and conciliation functions of the EEOC." *Greer v. Smith*, Slip Opinion at 5 (8th Cir. October 27, 1983), *infra*, at A-7.

There is a further split among the circuits in that the Eleventh Circuit's decision is contrary to the Ninth Circuit's. *Crawford v. United States Steel*, 660 F.2d 663 (11th Cir. 1981). In *Crawford* the situation is almost identical to the situation in *Inda v. United Airlines*, 565 F.2d 554 (9th Cir. 1977), which involved co-plaintiffs. In *Inda* the court disallowed one plaintiff's claim for failure to timely file the EEOC charge. In *Crawford* the court allowed the claims finding that al-



though timely filing of EEOC charges is a prerequisite to Title VII suit, not every original plaintiff in a multi-party non-class action must file charges as long as those who did are similarly situated. The plaintiffs in both *Inda* and *Crawford* were within the same time frame and filed as co-plaintiffs.

The situation in the present case is analogous to the situation involving co-plaintiffs in that at the time Word sought to intervene, the case was an individual action. She sought to become a named plaintiff. Her claim was not even within the same time frame as Greer's, so she had even less of a reason to expect the court to grant her intervention without the requisite filing with EEOC than the plaintiffs in either *Inda* or *Crawford*. No matter how the Eighth Circuit's decision is viewed it is contrary to and has so far departed from the usual judicial proceedings in Title VII cases as to demand supervision by this Court.

Additionally, this Court has an obligation to consider whether the district court had jurisdiction to hear Word's claim at all. *Andrus v. Charlestone Stone Products Co.*, 436 U.S. 604 (1978).

This Court has previously held that a conflict in the circuits justifies grant of the writ of certiorari. *Shapiro v. United States*, 235 U.S. 412 (1914). Pursuant to this Court's Rule 17 a good reason for granting the writ is shown when the question presented for review is an important one as to call for an exercise of this Court's supervision. Title VII is an important area of civil rights law. This question is not settled, but

is in a state of confusion. The question presented herein is almost a question of first impression in that there is no clear-cut definite answer to the question.

### CONCLUSION

For all the reasons and authorities cited herein, the petition for writ of certiorari to the Eighth Circuit Court of Appeals should be granted because there is conflict among the circuits; the Eighth Circuit has rendered a decision contrary to its own established rule; and the decision has so far departed from the usual course of judicial proceedings in Title VII cases as to call for an exercise of this Court's power of supervision.

Respectfully submitted,

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**APPENDIX A**

**Slip Opinion *Greer v. Smith*, No. 82-2241,  
8th Circuit, October 27, 1983**

United States Court of Appeals  
For the Eighth Circuit

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No. 82-2062

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Pat Behlar,	*
Appellant,	*
v.	*
Dr. Herman Smith, Jr.,	*
Chancellor; Board of Trustees of	*
the University of Arkansas,	*
Specifically Raymond P. Miller,	*
M.D., Chairman, Lewis Ramsey,	*
Jr., Bradley D. Jesson,	*
Kaneaster Hodges, Jr., Diane	*
Nolan, Jacquelin Douglas, Ph.D.,	*
Robert Pugh, Hugh B. Chalmers,	* Appeals from the
Jack Williams and Hall	* United States
McAdams, II,	* District Court
Appellees-Appellants/	* for the Eastern
Cross-Appellees.	* District of
	* Arkansas

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No. 82-2241

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Rachel Greer, et al.,	*
Appellees/Cross-	*
Appellants,	*
v.	*
Dr. Herman Smith, Jr.,	*

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Chancellor; Board of Trustees \*  
of the University of Arkansas \*  
Specifically Raymond P. Miller, \*  
M.D., Chairman, Lewis Ramsey, \*  
Jr., Bradley D. Jesson, \*  
Kaneaster Hodges, Jr., Diane \*  
Nolan, Jacquelin Douglas, Ph.D., \*  
Robert Pugh, Hugh B. Chalmers, \*  
Jack Williams and Hall \*  
McAdams, II, \*  
Appellees-Appellants/ \*  
Cross-Appellees. \*

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No. 82-2271

---

Rachel Greer, et al., \*  
Appellees/Cross- \*  
Appellants, \*  
v. \*  
Dr. Herman Smith, Jr., \*  
Chancellor; Board of Trustees, \*  
of the University of Arkansas, \*  
Specifically Raymond P. Miller, \*  
M.D., Chairman, Lewis Ramsey, \*  
Jr., Bradley D. Jesson, \*  
Kaneaster Hodges, Jr., Diane \*  
Nolan, Jacqueline Douglas, Ph.D., \*  
Robert Pugh, Hugh B. Chalmers, \*

Jack Williams and Hall	*
McAdams, II,	*
Appellees-Appellants/	*
Cross-Appellees.	*

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Submitted: April 14, 1983

Filed: October 27, 1983

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Before LAY, Chief Circuit Judge, McMILLIAN and  
JOHN R. GIBSON, Circuit Judges.

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**PER CURIAM.**

The Board of Trustees of the University of Arkansas and the Chancellor of the University of Arkansas at Pine Bluff were found to have discriminated against Dr. Rachel Greer, Dr. Rosemarie Word, Dr. Clara Jennings, Ms. Alma Murphy and Ms. Anne Finley because of their sex. The district court<sup>1</sup> awarded backpay and ordered that Dr. Greer be considered for the position of permanent chairmanship of the Health, Physical Education and Recreation Department and that Dr. Word be placed in the position of Director of Educational Experiences. Damages for harassment were awarded to Dr. Greer and Ann Finley. An unfavorable report was ordered removed from the file of Dr. Jennings. The defendants were enjoined from considering sex when making future job decisions relating to

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<sup>1</sup>The Honorable Henry Woods. United States District Judge for the Eastern District of Arkansas.



promotion, pay, assignment and tenure and from any sort of retaliatory conduct. The discrimination claim of Dr. Patricia Ann Behlar was denied, and she appealed. The defendants appeal primarily arguing that the district court's findings of sex discrimination were clearly erroneous. They also claim error in allowing Dr. Word's intervention, in certifying a class, the award of harassment damages, the calculation of backpay and Dr. Word's placement in a position of department director. We affirm the judgment of the district court, with the exception of its award of harassment damages, and remand this issue to the district court for further consideration.

Dr. Rachel Greer brought this class action complaining that the position of Chairperson of the Health, Physical Education and Recreation Department was filled by Dr. Joseph Cornelius, a black male, and that she was not given the position as a result of sex discrimination and was thereafter subjected to substantial harassment. Dr. Word was allowed to intervene in the action, claiming that Dr. Jesse Rancifer was appointed Director of Educational Experiences and that her unfair treatment in applying for the job was motivated by sexual discrimination.

A class was certified and the district court found for all plaintiffs except Dr. Patricia Behlar. The opinion is reported in *Greer, et al. v. University of Arkansas Board of Trustees*, 544 F. Supp. 1085 (1982). The district court in its detailed findings found that the Division of Teacher Education, and particularly the Health, Physical Education and Recreation Department, had

been "pervaded with a discriminatory attitude toward women" and that this reached gross proportions after appointment of Dr. Cornelius as department head. Dr. Cornelius "carried on an unbelievable campaign of harassment and discrimination against virtually all the women in this department." 544 F. Supp. 1091. The district court found that administrative superiors of Dr. Cornelius either were aware or should have been aware of his vendetta against the women and that this was particularly true of Dr. Walter D. Littlejohn, whom the court found had displayed insensitivity to discrimination against women on the basis of sex.

The University appellants argue that the district court's finding of intentional discrimination was clearly erroneous, that an improper burden was placed on them and that the district court erred in finding that the University's proffered reasons were pretext.

We have carefully considered the findings and conclusions of the district court, which are set out in detail in its reported opinion. It is apparent that the district court correctly allocated the burden of proof in accordance with *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 67 L. Ed. 2d 207 (1981) and *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 36 L. Ed. 2d 668 (1973). The district court found a prima facie showing of discrimination with respect to Dr. Greer and Dr. Word. It found that the reasons for selection of Dr. Rancifer over Dr. Word were clearly pretextual and that the selection process was a charade. With respect to Dr. Greer, it found that the selection process was a farce and that Dr. Cornelius was the least

qualified of the three applicants, which included Dr. Greer and Dr. Vanette Johnson. The district court found that both Dr. Greer and Ms. Finley were subjected to acute abuse and harassment from Dr. Cornelius and awarded \$5,000 damages to Dr. Greer and \$2,500 to Ms. Finley for the harassment. The district court awarded salary differential to Ms. Alma Murphy for the period July 1977 to July 1979 and found that her salary had been substantially equalized with the men's basketball coach three years ago.

We need not outline the findings of the district court's order nor engage in a detailed discussion of the record in this case. Suffice it to say that the findings of the district court with respect to the claims of Dr. Greer, Dr. Word, Dr. Jennings, Ms. Murphy and Ms. Finley are not clearly erroneous and should be affirmed.

Similarly, with respect to the claim of Dr. Behlar, we conclude that the findings denying her claim of sex discrimination are not clearly erroneous and should also be affirmed on the basis of the district court's order.

## II.

University appellants make two claims of procedural errors on the part of the district court. The first is that the district court improperly allowed Dr. Word to intervene because she had not filed a charge with the EEOC. It is claimed that this is a jurisdictional defect that defeats the order allowing intervention under Rule 24, Federal Rules of Civil Procedure. We do not find cases under Rule 24 that clearly govern this issue.

However, in cases construing Rule 23 with respect to class actions in Title VII cases, it has been held that the purpose of 42 U.S.C. § 2000e-5 (e) is to provide notice to the charged party so as to bring to bear the voluntary compliance and conciliation functions of the EEOC. When any charge is filed, these purposes are served as there is no claim of surprise in such a situation. *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711, 720 (7th Cir. 1969). *Miller v. International Paper Co.*, 408 F.2d 283, 285 (5th Cir. 1969). The University, having been apprised of the sex discrimination claims by the other individuals, cannot now claim it was improper to allow Dr. Word to intervene so as to assert charges of the same nature.

Appellant University also argues that the district court erred in certifying a class. The record discloses that a stipulation was made by the parties with respect to the extent of the membership in the class. Under these circumstances we must reject appellant's argument. Having reviewed the record, we find no abuse of discretion in the district court's order declaring a class and proceeding to dispose of the case on the basis of the class as so certified.

### III.

Appellant University makes numerous arguments concerning the damages for harassment awarded to Dr. Greer and Ms. Finley. A review of the court's order and the record in this case causes us to conclude that there was substantial evidence of harassment of these two individuals by Dr. Joe Cornelius, and that Dr. Littlejohn had knowledge of the harassment. The award of

damages, however, is against the Chancellor and against the members of the Board of Trustees of the University. We thus have an issue not only of whether the damages for harassment are appropriate but also whether the parties against whom the award was entered are properly subject to such award of damages.

This court in *Williams v. Trans World Airlines, Inc.*, 660 F.2d 1267, 1272-73 (8th Cir. 1981), has held that an award of damages for humiliation or mental distress may be made in a Title VII case in order to make the person "whole." In *Williams* the district court found an actual injury but denied recovery and this court remanded for determination of damages for mental distress. 660 F.2d at 1273. Other circuits may have differing rules of damages. See *Walker v. Ford Motor Co.*, 684 F.2d 1355, 1363-64 (11th Cir. 1982). We need not tarry long on this issue as the law of the circuit has been established and in this case plaintiff also sought recovery under 42 U.S.C. § 1983. The evidence of the particularly egregious conduct of Dr. Cornelius fully justifies an award of damages for harassment which is closely related to the mental and emotional distress recognized in other decisions. See *Harris v. Harvey*, 605 F.2d 330, 340 (7th Cir. 1979); *Simineo v. School District No. 16*, 594 F.2d 1353, 1357 (10th Cir. 1979). The damages awarded indicate that the award was of the nature of compensatory damages rather than punitive damages.

The district court findings concerning the harassment by Dr. Cornelius do not address questions of the responsibility of the University appellants for such

damages under the eleventh amendment, *Edelman v. Jordan*, 415 U.S. 651, 39 L. Ed. 2d 662 (1974); *Jackson Sawmill v. United States*, 580 F.2d 802 (8th Cir. 1978), or whether the Board of Trustees and Chancellor Smith have a personal qualified immunity from liability under 42 U.S.C. § 1983, *Procurier v. Navarette*, 434 U.S. 555, 55 L. Ed. 2d 24 (1978). Further, the findings do not demonstrate whether Chancellor Smith and the Board of Trustees have personal responsibility for the acts of Cornelius or whether the liability is solely based on a theory of respondeat superior. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 56 L. Ed. 2d 611 (1978); *DeShields v. U.S. Parole Commission*, 593 F.2d 354 (8th Cir. 1979). We thus lack sufficient specific findings to properly review the arguments raised with respect to damages awarded for harassment. We, therefore, remand to the district court for further findings on this issue. See *Anthan v. Professional Air Traffic Controllers*, 672 F.2d 706, 711-12 (8th Cir. 1982).

#### IV.

University appellants argue that the district court applied the wrong measure in calculating the backpay award because it did not consider as interim earnings the additional compensation for summer work or other overload compensation received by those plaintiffs on a nine-month contract. The district court properly considered this issue under the standards discussed in *Bing v. Roadway Express*, 485 F.2d 441 (5th Cir. 1973), and found that the amounts earned during the summer months and in the evenings during regular



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school terms were in excess of their contract amounts and were compensation for services which these plaintiffs could earn in spite of their new positions. It refused to allow a deduction as interim earnings under 42 U.S.C. § 2000e-5 (g). We conclude that this finding is not clearly erroneous.

The district court did not abuse its discretion in awarding pre-judgment interest on backpay as it found that the backpay recovery was reasonably capable of being ascertained at the time of the discriminatory act and that the backpay recovery would not be complete and the plaintiffs would not be made whole without pre-judgment interest. See *General Facilities v. Nat. Marine Service*, 664 F.2d 672, 674 (8th Cir. 1981).

V.

The judgment is affirmed in all respects with the exception of the damages for harassment awarded to Dr. Greer and Ms. Finley. The judgment as to this issue is vacated and remanded for further proceedings.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,  
EIGHTH CIRCUIT.

## **APPENDIX B**

**Title VII to the Civil Rights Act of 1964,  
42 U.S.C. § 2000e-5 (e) and (f) (1)**

## 42 USCS § 2000e-5

(e) **Time for filing charges.** A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(f) **Civil action by Commission, Attorney General, or person aggrieved.** (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision

named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge is filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circum-

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stances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.